

Rules and Responsibilities

Last Updated Friday, 16 February 2007

Title 1 - Chapter 3: Quasi-Judicial Hearings

Title 2 - Chapter 3: Boards and Commissions

Title 2 - Chapter 7: Code of Conduct

Article V, Section 74: Planning

Article IX: General Provisions - Advisory Commissions

Article XI: Parks and Recreation

Article XII: Open Space

Boards and Commissions Guiding Principles (UNDER CONSTRUCTION)

Community Sustainability

Board Budgets

Generally, budgets are not established for boards and commissions. Funds necessary for routine board and commission business are included in the budgets of the respective staff support department for the board or commission.

Bylaws

Most boards and commissions have bylaws to govern their normal operations. These bylaws serve to supplement the Boulder Revised Code and other legal documents applicable to the board or commission.

Conflicts of Interest Guidelines

Conflicts of interest are covered by Chapter 2-7 of the Boulder Revised Code of 1981, as amended. Basically, the code

requires that individuals not participate in any decision which could affect them or a member of their immediate family financially, and also requires that board or commission members refrain from participating in any decision in which they have a "substantial interest." A "substantial interest" is defined as: "A situation, including without limitation a pecuniary stake in the outcome of a decision, in which, considering all of the circumstances, a reasonably prudent person observing the situation would expect a marked tendency to make a decision other than an objective decision."

This includes non-financial conflicts, such as close proximity to an area under consideration (six hundred feet has been used as a guideline, but the real issue is the extent of neighborhood pressure on the potential decision maker), close friendship with one of the parties to a decision, or any other situation which would lead to a clear "appearance of impropriety." If a board or commission member is unsure about whether or not a conflict of interest exists, the board or commission member is permitted to consult with the City Attorney confidentially and to request an advisory opinion as to the applicability of the conflict of interest rules to a particular situation. This right is specified in Section 2-7-6 of the Boulder Revised Code of 1981.

Eco Passes Available to Members

The City of Boulder, through the GO Boulder Alternative Transportation Program, offers Eco Passes to qualifying members of boards and commissions. These passes can be used for almost all local and regional RTD bus service. The City of Boulder City Manager's Office administers the program. For questions regarding board and commission Eco Passes call 303/441-3002. For general questions about alternative modes of transportation call Transportation Planning at 303/441-3225.

Meeting Summaries to City Council

Accurate and timely information to City Council and the public about the action of the board is important. Every board and commission must submit a meeting summary to the City Manager's Office within five days following a board meeting. The summaries will be forwarded to City Council in the next Weekly Information Packet. Meeting summaries must be accurate as detailed minutes are not routinely sent to City Council. The meeting summaries include the following information:

1. name of board or commission;
2. the date, hour and place of the meeting;
3. the names of members, staff and guests present;
4. brief summary of any public comments;
5. was it a regular or special meeting;
6. outline of the agenda including which items were addressed or tabled what action was taken and a vote tally of any votes taken
7. time of any future meetings, committees or special hearings.

Minutes

The approved minutes from the board or commission meeting are forwarded to Central Records and Municipal Government Reference of the Boulder Public Library within one week following approval of the minutes by the board. The minutes must include the following information:

- 1.all information listed in the meeting summary, updated for accuracy;
- 2.details of all votes taken;
- 3.summary of any public and board comments;
- 4.
5. descriptive headings for each topic of discussion;
- 6.the time of adjournment.

Open Meetings Regulation

The general provisions concerning boards and commissions are contained in Chapter 2-3 of the Boulder Revised Code of 1981, as amended. Paragraph 2-3-1(b)(5) requires that each board or commission: "Hold all meetings open to the public, after notice of the date, time, place, and subject matter of the meeting, and provide an opportunity for public comment at the meeting." This requires at a minimum that boards and commissions provide twenty-four hour specific notice of each meeting by posting a copy of the meeting agenda in the lobby of the Municipal Building. The Citizen Assistance Office provides space for those notices.

In addition, most boards and commissions give notice of meetings by publication of the agenda in the Daily Camera. Although publication is not required, it is highly recommended. In the past, boards and commissions held agenda meetings and other informal gatherings without giving the required notice. However, 1991 changes to the state public meetings law as well as the consistent interpretation of Chapter 2-3-1 require that if three or more members of a board or commission meet at any time and discuss public business, notice must be given of such meeting, and the meeting must be open to the public. If a chance meeting occurs, the members of the board or commission must refrain from discussing public business or convene in groups of less than three. One-on-one communication about public business between members of a board or commission is permitted at all times, and it is only when three or more members gather that a "meeting" is constituted.

Orientation and Training

City Council will arrange annual orientation for members of boards and commissions. These orientation sessions will focus on communication and organizational issues, as well as providing guidance in developing work plans for boards and commissions.

4. when public notice of the meeting was given;

Removal from Board

The charter provisions concerning boards and commissions generally are contained in Article IX, Section 130, "General Provisions Concerning Advisory Commissions." Section 130 provides that: "The Council shall have the power to remove any commissioner for non-attendance to duties or for cause." Although regular meetings are specified, no specific number of absences is given as grounds for removal under Section 130. The charter also contains more specific provisions dealing with specific boards. The provisions concerning the Planning Board, contained in Article V, Section 74, are slightly more detailed with regard to removal by the council for cause.

Specifically, the charter provides for the Planning Board that: "The Council shall remove any appointed member who displays lack of interest, or fails, upon due notice, and continuously for three months, to attend meetings of the board without formal leave of absence."

The provisions for the Parks and Recreation Advisory Board contained in Article XI, Section 158 are similar: "The Council may remove any board member who displays lack of interest or who fails to attend board meetings for three consecutive months without formal leave of absence."

Finally, the provisions concerning the Open Space Board of Trustees are quite general. Article XII, Section 173 provides only that: "Five members of the Council may remove any board member for cause."

To summarize, any absence of over three months from a board or commission.

However, the City Council retains the power to remove a board or commission member for absences of a shorter period and for causes other than absence from board or commission meetings.

Resignations

If for some reason a member of a board or commission must resign prior to expiration of his/her term, the member is asked to notify the City Council in writing of their intentions. He/she should also send a copy to the respective staff liaison, Manager of Boards and Commissions, City Council Office, and their other board members.

Rules Applicable to Boards and Commissions

The general rules concerning boards and commissions are those contained in Chapter 2-3 of the Boulder Revised Code of 1981. The critical rule is that three affirmative votes are required for any action of a board or commission of five members, and four affirmative votes are required for any action of the Planning Board, and for any action of the Parks and Recreation Advisory Board to dispose of park land or to appropriate funds from the Permanent Parks and Recreation Fund. Thus, contrary to the usual rules of parliamentary procedure, an absolute majority is required for many actions, and if members are absent, it may be necessary to re-hear a matter so that it is possible for the entire board or commission to vote. This makes it particularly critical that board and commission members attend every meeting if at all possible, in order to give applicants a fair opportunity for an affirmative decision.

The general provisions of the code, reflecting Article IX, Section 130 of the Charter, provide for election of officers of

each board and commission by the board or commission, minutes and summaries, taping of meetings, application of Robert's Rules of Order, Newly Revised, unless the board or commission adopts other rules of the procedure, and a prohibition on abstentions. Subsection 2-3-1(f) specifically provides that if a member of the board or commission is present but refuses to vote, the member's vote: "Shall be recorded in the affirmative." The only exceptions are approval of minutes of a meeting that the member did not attend or if the member was excused under the conflicts of interest chapter, Chapter 2-7, Boulder Revised Code of 1981, as amended, or on consideration of such member's conduct in the business of the board or commission.

Quasi-Judicial Requirements

Quasi-judicial hearings are a specific form of process required whenever a public hearing is required for the application of a standard set forth in the code to a fact situation. The quasi-judicial chapter of the Boulder Revised Code of 1981, Chapter 1-3, specifies all of the details of handling procedural and evidentiary issues at such hearings. Quasi-judicial hearings may give rise to an appeal to district court.

Accordingly, advice should be sought from the Office of the City Attorney whenever a quasi-judicial issue arises. Significantly, the quasi-judicial chapter specifies that: "In the absence of objection, the hearing will be conducted informally, and failure to request any procedure shall constitute a waiver thereof." Subsection 1-3-5(h), B.R.C. 1981. Thus, the only time when a board or commission needs to be concerned about an interpretation of Chapter 1-3 is when a demand is made for a particular procedure. In the absence of such demand, informal proceedings are specifically authorized by the code.

The general provisions of which board and commission members should be aware include specific notice requirements, the requirement that testimony be taken under oath or by affirmation, the requirement that cross-examination and the presentation of oral and documentary evidence be permitted, specific evidentiary requirements, which are somewhat looser than those in civil litigation, and a requirement of written findings of fact and conclusions of law.

When acting in a quasi-judicial capacity, members are applying the policies and standards adopted by the people in the charter and by the Council in the Boulder Revised Code and other ordinances, resolutions, and motions. Board members may not always agree with all of those policies, but like judges are obligated to apply them to the facts of the matter before the board despite any disagreement.

Most significantly for board and commission members, the quasi-judicial chapter requires that the substance of all material contacts outside of the hearing dealing with the subject matter of the decision be disclosed on the hearing record and that an opportunity be given for comment at the hearing if the material is to be considered in any way by the board or commission. The Office of the City Attorney recommends that board and commission members avoid all such "ex parte" discussions outside of the hearing in order to avoid problems of disclosure under Section 1-3-6, B.R.C. 1981. In the alternative, whenever an ex parte contact cannot or would not be avoided, it is recommended that careful notes be kept of any communications which cannot be avoided so that they can be disclosed in detail. It is recommended that such disclosure be made whether or not the board or commission member intends to actually rely upon the communication, so that no allegation to the contrary can ever be made. Board and commission members should also avoid site visits guided by an applicant whenever possible, to avoid a chance of improper influence on a decision.

Vacancies on Boards and Commissions

Vacancies on boards and commissions which occur because of early resignations of members or expiring terms are coordinated by the City Manager's Office. The Manager of Boards and Commissions will consult with the respective board and commission on the best recruitment process strategy for that time. The positions will be advertised for at least 10 days and applications sent to City Council members. Interviews with City Council will be held and the new members will be selected at the next convenient City Council meeting.